

The Social Function of the Corporation

A Discussion between Leo E. Strine, Jr.,* and Lawrence E. Mitchell**

Moderated by Stephen M. Bainbridge†

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Luncheon Session

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In his essay, *Toward Common Sense and Common Ground?*,¹ Delaware Vice Chancellor Leo Strine tackled what is arguably the core question of corporate governance; namely, what is the social purpose of the corporation? In seeking to identify common concerns of management, labor, and shareholders, Strine set out—and, seemingly endorsed—a vision of the corporation as “a social institution that, albeit having the ultimate goal of producing profits for stockholders, also durably serves and exemplifies other societal values.” Accordingly, he directed our attention to the prospects of creating “a corporate governance structure that better fosters [the corporation’s stakeholders’] mutual interest in sustainable economic growth.”

In a series of articles, including *The Morals of the Marketplace*,² *Who Needs the Stock Market?*,³ and *The Legitimate Rights of Public Shareholders*,⁴ Professor Lawrence Mitchell has similarly focused on the real economic purpose of corporations—namely, making things and providing services—which, he argues, corporate governance scholarship too often ignores. To this extent, Mitchell and Strine seem to be on the same page. Yet, Mitchell’s work suggests he increasingly believes corporate governance law has far less practical importance than other matters, like financial market pressures. Mitchell’s work also suggests that he values the role of shareholders somewhat less than does Strine.

In this discussion, the moderator will pose several questions for Mitchell and Strine to consider, including:

1. What do we mean when we call the corporation “a social institution”?
2. If there are “societal values” beyond profit making for shareholders that the corporation “durably serves and exemplifies,” as Strine argues, what are those values?
3. Are corporate law and governance appropriate vehicles for advancing those goals?

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¹ Leo E. Strine, Jr., *Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance*, 33 J. CORP. L. 1 (2007).

² Lawrence E. Mitchell, *The Morals of the Marketplace*. Stanford Law & Policy Review, Vol. 20; GWU Legal Studies Research Paper No. 1129340. Available at SSRN: <http://ssrn.com/abstract=1129340>

³ Lawrence E. Mitchell, *Who Needs the Stock Market? Part I: The Empirical Evidence* (October 30, 2008). Available at SSRN: <http://ssrn.com/abstract=1292403>

⁴ Lawrence E. Mitchell, *The Legitimate Rights of Public Shareholders* (March 2, 2009). Washington & Lee Law Review; GWU Legal Studies Research Paper No. 461; GWU Law School Public Law Research Paper No. 461. Available at SSRN: <http://ssrn.com/abstract=1352025>.

4. Given the current legal and political trends favoring shareholder primacy and activism, what are the prospects for treating the corporation as a social institution?